question; and the *dictum* in *Finn's Case* may never be reviewed by our higher court, and text writers will continue to put Virginia in a class by herself on this question.

Further, a witness in such case need only state the substance of what was testified by the absent witness. *Caton* v. *Lenox* (*supra*). The rule has been stated otherwise, and the witness, unless he could give the exact words of the absent witness, was disqualified. *Warren* v. *Nichols*, 6 Metc. 261, is one of these extreme cases. In *Ruck* v. *Rock Island* (*supra*), the court says, that "if a witness, from mere memory, professes to be able to give the exact language, it is reason for doubting his good faith and veracity." A witness may also refresh his memory from notes made by him at the previous trial.*

C. A. ASHBY.

Newport News, Va.

PROCEEDINGS BY INTERROGATORIES AGAINST EXECUTION DEBTORS.

Editor Virginia Law Register:

I have had my attention called recently to a subject upon which your views in the REGISTER would be much appreciated by the bar. By the Acts of 1897-98, p. 503, Pollard's Sup. p. 368, section 3603 of the Code of 1887, touching proceedings by interrogatories to ascertain the estate of a debtor on which a *fi. fa.* is a lien, etc., is amended.

One of the principal differences between the old and the new acts is that it is now necessary to procure the first summons to the execution debtor from the judge of the court of record from which the execution issued—a step entirely unnecessary and putting the plaintiff to the trouble of hunting up the judge wherever he may be in his circuit, instead of obtaining the summons from the commissioner as formerly. In the country the judge-chase would at times equal in seriousness the debtor-chase. It would seem also that supplementary proceedings are now no longer to be had upon executions issued by, and control of which is retained by, a justice of the peace, because the new act limits the right to issue the summons to "the *judge of any court of record* from which the *fi. fa.* issued." Nevertheless, compare sec. 3605, unamended: ". . . . or if the judgment be of a justice, to the court" of his county or corporation. The Act of February 14, 1900, chapter 352, Acts 1899-1900, giving county courts jurisdiction in *scire facias* proceedings or motions to revive judgments of justices, does not seem to affect the question. This, however, in any view of the case, is only incidental.

Another material difference is that the former statute authorized the commissioner, in the event of a failure of debtor to file answers upon oath, to issue *an attachment* against the debtor. Under the amendment, however, he may only, by *rule* returnable to a future day, or, it is true, forthwith require the debtor to *show cause why an attachment should not issue against him.* Still there is no provision as to who is to issue the attachment in such case—the commissioner, the court, the judge in vacation, or the clerk. Yet every step of the proceeding should be made clear and placed beyond doubt. Courts are chary about arresting the citizen upon implied authority, and do not always incline to the "evident intendment" of the legislature.

[* *Finn's Case* is approved in *Montgomery* v. *Commonwealth*, 3 Va. Sup. Ct. Rep. 118 (Feb. 7, 1901), in an opinion by Phlegar, J.—EDITOR VA. LAW REGISTER.]

My most serious doubt, however, arises upon sec. 3606, which was not amended, but must nevertheless be read in connection with secs. 3603-4 as amended. Is it necessary in the case of *an absconding judgment debtor* to obtain a summons from the *judge*, or can a *commissioner* issue it? At first glance I should answer the first question in the negative, the second in the affirmative. But when I study it with the knowledge that my right is entirely statutory, and that unless there be express statutory authority for imprisoning a debtor, my client makes himself liable to an action for false imprisonment, I am minded to go slowly. The words in sec. 3606 must refer to what has gone before, yet what has gone before *takes from the commissioner* the power which he formerly had—to issue a summons.

It might be replied that the language of sec. 3370 is sufficient to cover the case:

"In a case at law a party may file in the clerk's office, and in a case or matter before a commissioner of a court any person may file with such commissioner, interrogatories to any adverse party or claimant."

But it is by no means clear to me that the case suggested would be covered by this act.

However it may be, the remedy in my judgment is now a dangerous one, and a party seeking to avail himself of it may unconsciously have picked up the hot end of the poker and be mulcted in heavy damages by a more or less sympathetic jury of brother-debtors to the execution defendant. The difficulty of the situation is increased by the well-known fact that in cases of absconding debtors we do not, as a rule, have a great deal of time for wandering in the mazes of the law of statutory construction. We must act at once or the quarry eludes us.

Richmond, Va. GEORGE BRYAN.

ADVERSE POSSESSION—STATUTE OF LIMITATIONS.

Editor Virginia Law Register:

In an editorial in the February REGISTER (p. 705) you call attention to the fact that sec. 2915 (Va. Code) bars an entry or action for real estate after fifteen years, and that sec. 2726 (Acts 1895–6, 514) gives an action against one claiming title to real estate, though not in the adverse possession thereof; and you say that "it is an interesting question how far the courts may refuse to enforce the statute (sec. 2915) according to its plain terms, and may require adverse possession as a condition precedent to the bar of the statute."

You invite discussion of this question. It seems to me that sec. 2915 does not apply to the action brought against a party out of possession under sec. 2726, and that the courts cannot "enforce" sec. 2915 where there is no adverse possession. In the first place, this seems to be the proper construction of sec. 2915: "No person shall make an entry on, or bring an action to recover, any land (*in the possession of another*) . . . but within fifteen years . . . next after the time at which the right to make such entry, or bring such action, shall have first accrued . . ." And the reason and principle upon which the courts have fixed the running of the statute as coincident with the beginning of adverse possession is that it is the adverse possession which creates the only cause of action against which sec. 2915 was intended to be a bar. In the second place, your premise necessarily assumes that the plaintiff bringing an action under sec. 2726, and the defendant pleading the statute thereto under sec. 2915, *are both out of possession*,